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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

KRISHNA OKHANDIAR, an individual,
and REMILIA CORPORATION LLC, a
Delaware limited liability company,

Plaintiffs,

V.

JOHN DUFF III, an individual,
HENRY SMITH, an individual, and
MAXWELL ROUX, an individual.

Defendants.

Case No.: 2:23-cv-1409-APG-EJY

**PLAINTIFF'S STATEMENT OF GOOD
CAUSE UNDER RULE 4(m)
REGARDING SERVICE UPON HENRY
SMITH**

Plaintiffs Krishna Okhandiar and Remilia Corporation LLC hereby respond to the notice of the Court filed on January 5, 2024 (ECF No. 8) regarding service upon defendant Henry Smith and state that good cause exists to not dismiss without prejudice the claims against Defendant Smith under Rule 4(m).

The Court is correct that no return of service has been filed as to Defendant Smith. However, Defendant Smith is not a resident of the United States. The Complaint alleges that Mr.

¹ Pursuant to LR 11-1(b), attorney Jonathan Heaton is designated for local service at address 7285 Dean Martin Dr. Ste 180, Las Vegas, NV 89118.

1 Smith is a citizen and resident of New Zealand² and Defendant Smith has confirmed that he is
 2 indeed a citizen and permanent resident of New Zealand by way of a declaration submitted to this
 3 Court.³ Rule 4(m)'s requirement for service within 90 days of filing the Complaint "does not
 4 apply to service in a foreign country under Rule 4(f)." Rule 4(f), in turn, states that a person may
 5 be served "at a place not within any judicial district of the United States [. . .] by any
 6 internationally agreed means of service that is reasonably calculated to give notice."
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8 Plaintiffs have attempted to serve Defendant Smith in New Zealand, but such service has
 9 not been completed. Because Plaintiffs' efforts to serve Defendant Smith in New Zealand are not
 10 subject to the 90-day limitation for service found in Rule 4(m), good cause exists to not dismiss
 11 the claims against Mr. Smith.

12 Additional good cause to not dismiss the claims against Defendant Smith exists as
 13 Defendant Smith has now submitted a motion and an affidavit to this Court, with the assistance
 14 of counsel. Clearly, Defendant Smith is apprised of the litigation and has notice of the claims
 15 against him. Moreover, Defendant Smith has filed a related lawsuit in Delaware, which has been
 16 removed to the United States District Court for the District of Delaware, and Plaintiffs have
 17 consented to the transfer of this case to that District. (ECF No. 21). Smith himself has asked this
 18 Court, in the alternative to dismissal, to transfer this case to the District of Delaware. (ECF No.
 19 9). Thus, dismissing the claims against Defendant Smith under Rule 4(m) would not serve the
 20 needs of fair notice nor would it promote any judicial economy. Allowing the claims against
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 25 ² Complaint (ECF No. 1) ¶5.
 26 ³ See Declaration of Henry Smith in Support of Defendants' Motion to Dismiss Pursuant to Fed.
 27 R. Civ. P. 12(b)(2) & 12(b)(3), or Alternatively to Transfer Pursuant to 28 U.S.C. §§ 1406(a) or
 1404(a) (ECF No. 13) ¶ 2 ("I am a citizen and resident of New Zealand. My Permanent residence
 since at least August 2021 has been the City of Auckland, New Zealand.").

1 Defendant Smith to persist as the parties resolve the questions regarding forum is the most
2 economical and just way to proceed.

3

4 DATED this 2nd day of February 2024.

5 **MICHAEL BEST & FRIEDRICH LLP**

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7 /s/ Bradley W. Madsen
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CERTIFICATE OF SERVICE

I hereby certify that on February 2nd, 2024, I electronically filed the foregoing
**PLAINTIFF'S STATEMENT OF GOOD CAUSE UNDER RULE 4(m) REGARDING
SERVICE UPON HENRY SMITH** with the Clerk of the Court for the U.S. District Court,
District of Nevada by using the Court's CM/ECF systems and thereby served it upon participants
in the case who are registered CM/ECF users.

/s/ Bradley W. Madsen